

RECEIPT # 57034  
 AMOUNT \$ 192  
 SUMMONS ISSUED 2  
 LOCAL RULE 4.1 \_\_\_\_\_  
 WAIVER FORM \_\_\_\_\_  
 MCF ISSUED \_\_\_\_\_  
 BY DPTY. CLK. 48 FOR THE DISTRICT OF MASSACHUSETTS  
 DATE 7-2-04

FILED  
CLERK'S OFFICE

2004 JUL -2 PM 2:03

DISTRICT OF MASS.

MATTHEW J. NICKERSON,

Plaintiff )

v. )

Civil Action No. )

GERALD F. TOWNS, in personam, and )

F/V VIRGINIA ROWES, in rem, )

Defendants )

04 - 11505 JLT

MAGISTRATE JUDGE Alexandre

**COMPLAINT and DEMAND FOR TRIAL BY JURY**

1) This is a case of admiralty and maritime jurisdiction, as will more fully appear, and is an admiralty or maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure.

**PARTIES**

2) The plaintiff, Matthew J. Nickerson ("Nickerson"), is an individual residing in the town of Plymouth, Plymouth County, in the Commonwealth of Massachusetts.

3) The defendant, Gerald f. Towns ("Towns") is an individual residing in the town of Carver, Plymouth County, in the Commonwealth of Massachusetts.

4) At all relevant times, the defendant, the F/V Virginia Rowes (the "Virginia Rowes"), was a fishing vessel owned and operated by Towns. The Virginia Rowes is, and/or will be during the pendency of this action, found in this district.

**FACTS**

5) At all relevant times, Nickerson owned and operated a fishing vessel named the F/V Entrapment ("Entrapment").

6) On or about July 3, 2001, Nickerson was at sea operating the Entrapment lawfully and with due care at approximately position 41.57.554' N and 070.34.804'W at or near what is commonly referred to as Rocky Point.

7) Nickerson was hauling lobster traps at approximately twelve noon and had put the Entrapment into a stationary position.

8) At the same time and place, Towns was operating the Virginia Rowes in a negligent and careless manner.

9) Towns owed other vessels and respective crew a duty of care to ensure safe passage on the seas.

10) Towns breached this duty.

11) As a direct and proximate result of Town's negligence, the Virginia Rowes struck the Entrapment.

12) As a direct and proximate result of Town's negligence, the Entrapment was broken and damaged and rendered inoperable.

13) The aforesaid collision and resulting damage were not caused or contributed to by any negligence on the part of the Entrapment or her owner or operator but were caused wholly by and due solely to the fault and neglect of the defendants and those in charge of the Virginia Rowes.

14) As a direct and proximate result of Town's negligence, Nickerson lost the profits that he would have otherwise earned between the time of the collision and the time at which a suitable, permanent

replacement vessel was found, purchased and made seaworthy.

**COUNT ONE**

15) Nickerson repeats the allegations contained in paragraphs one through fourteen as if fully set forth herein.

16) This count is brought *in personam* against Towns for his negligence.

**WHEREFORE**, the plaintiff demands judgment against the defendant, Towns, on Count One, plus interest, costs and fees.

**COUNT TWO**

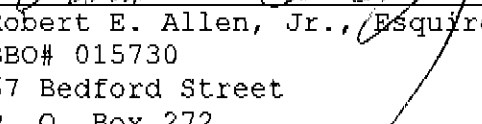
17) Nickerson repeats the allegations contained in paragraphs one through fourteen as if fully set forth herein.

18) This count is brought *in rem* against the Virginia Rowes for Nickerson's legal liability for his negligence.

**WHEREFORE**, the plaintiff demands judgment against the Defendant, Virginia Rowes, on Count Two, plus interest, costs and fees.

Dated: July 2, 2004

The Plaintiff,  
Matthew J. Nickerson,  
By his Attorney,



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Robert E. Allen, Jr., Esquire  
BBO# 015730  
67 Bedford Street  
P. O. Box 272  
Middleboro, MA 02346-0272  
#015730A  
Tel 508-946-4747  
Fax 508-946-2177

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Matthew J. Nickerson v. Gerald F. Towns
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ☐ II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950. \*Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☒ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
4. Has a prior action between the same parties and based on the same claim ever been filed in this court? YES ☒ NO ☐
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403) YES ☐ NO ☒
- If so, is the U.S.A. or an officer, agent or employee of the U.S. a party? YES ☐ NO ☐
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284? YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
- YES ☒ NO ☐
- A. If yes, in which division do all of the non-governmental parties reside?
- Eastern Division ☒ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
- Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions) YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Robert E. Allen, Jr., Esquire BBO 015730

ADDRESS 67 Bedford Street, Middleboro, MA 02346

TELEPHONE NO. (508) 946-4747

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I (a) PLAINTIFFS**

MATTHEW J. NICKERSON

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Plymouth  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Robert E. Allen, Jr. BBO #015730  
67 Bedford Street  
Middleboro, MA 02346  
(508) 946-4747

**DEFENDANTS**

GERALD F. TOWNS, in personam,  
and the F/V VIRGINIA ROWES, in rem

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Plymouth  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
TRACT OF LAND INVOLVED

ATTORNEYS (IF KNOWN)

Edmund M. Pitts, Esquire  
Pitts & Pitts, LLC  
152 Lynnway, Unit 1F  
Lynn, MA 01902

**II. BASIS OF JURISDICTION**

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff  
☒ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES**

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                        |
|---|---------------------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. CAUSE OF ACTION**

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Admiralty cause of action for property damage to, and lost profits of,  
a vessel engaged in fishing

**V. NATURE OF SUIT** (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Encl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury—Med Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input checked="" type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Food & Drug <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 680 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395H) <input type="checkbox"/> 862 Black Lung (928) <input type="checkbox"/> 863 DIWC (405(g)) <input type="checkbox"/> 864 DIWW (405(g)) <input type="checkbox"/> 865 SSD Title XVI <input type="checkbox"/> 865 HSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS Third Party 26 USC 7608	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights <b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights			

**VI. ORIGIN**

(PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION  
☐ UNDER F.R.C.P. 23

DEMAND \$ 100,000.00 (Indicate only if demanded in complaint)

JURY DEMAND: ☒ YES ☐ NO

**VIII. RELATED CASE(S) IF ANY** (See instructions):

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE  
7/2/04

SIGNATURE OF ATTORNEY OF RECORD